

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

CHARLES CHRISTOPHER GULAS,  
  
Plaintiff,

v.

No. CIV 06-340 JH/LFG

DARREN WHITE, Sheriff of  
Bernalillo County, *et al.*,

Defendants.

**ORDER ADOPTING MAGISTRATE JUDGE'S ANALYSIS  
AND RECOMMENDED DISPOSITION  
AND GRANTING LEAVE TO FILE FOURTH AMENDED COMPLAINT**

THIS MATTER came before the Court on the Magistrate Judge's Analysis and Recommended Disposition [Doc. 66], recommending that Plaintiff Charles Christopher Gulas ("Gulas") be granted leave to file a proposed Fourth Amended Complaint. On June 13, 2008, Defendants Lane Blair ("Blair") and Corrections Corporation of America ("CCA") filed objections to the proposed findings and recommended disposition. [Doc. 71.] On June 16, 2008, Defendant Darren White filed a Notice of Adoption by Reference of the objections filed by Blair and CCA. [Doc. 72.]

The Court conducted a *de novo* review of those portions of the Magistrate Judge's findings and recommended disposition to which Defendants object. Defendants continue to argue that the amendment is futile as applied to them. In addition, Defendants contend that the motion for leave to amend should be denied because Gulas represented to the Court and defense counsel that the

proposed Fourth Amended Complaint added new parties only, rather than new allegations against the previously identified parties.

The Court carefully reviewed the Third Amended Complaint and the proposed Fourth Amended Complaint. While the Fourth Amended Complaint does not appear to correct any of the deficiencies identified by Defendants, the Court will address those issues with respect to Defendant CCA and Blair in their Motion to Dismiss that is fully briefed and ready for resolution. Thus, the Court overrules Defendants' objections based on futility of the proposed amendment.

The Court also considered Defendants' position that Plaintiff misrepresented the purpose of the proposed Fourth Amended Complaint when he informed both the Court and defense counsel that the proposed amendment sought only to include the appropriate parties [Doc. 71, Ex. A.], whereas the actual proposed complaint also added new allegations of alleged "cruel and unusual conditions of confinement." [Doc. 49, Ex. 1, ¶ 13.] The motion to amend itself, along with Plaintiff's arguments and his attorney's affidavit, gave the impression that only new parties were being added. [Doc. Nos. 48, 49, 50.]

The Court agrees with Defendants that it is improper to add new allegations to a proposed amended complaint, when Plaintiff characterizes the amendment as being for the sole purpose of adding new parties. For example, Mr. Gulas represented that he made "this motion [for leave to amend] pursuant to RCFC 15(a), to add the City of Albuquerque as a defendant for violations of Plaintiff's rights." [Doc. 48.] In his supporting affidavit, Plaintiff's counsel averred: "On February 26, 2008, Plaintiff attempted to file his Fourth Amended Complaint, which did not add any new allegations against either of the other parties that had answered up to that point." [Doc. 50, Affidavit of Plaintiff's Counsel.] In a letter to defense counsel requesting consent to file the Fourth Amended Complaint, Mr. Gulas explained that he needed to add a new Defendant, that he had drafted a Fourth

Amended Complaint, “making these corrections,” and that “[n]one of the changes affect your clients.” [Doc. 71, Ex. A.]

A review of the proposed Fourth Amended Complaint and the earlier attempt to file the Fourth Amended Complaint reveals new allegations of cruel and unusual conditions of confinement, which purportedly would attempt to state a claim of an Eighth or Fourteenth Amendment violation against Defendant CCA. Defendant CCA had already answered the Third Amended Complaint when Plaintiff attempted to file the Fourth Amended Complaint.<sup>1</sup> Thus, the pleadings demonstrate that Mr. Gulas improperly characterized his proposed amendment as seeking only to add new parties rather than new allegations. The Court does not condone this conduct and further advises Plaintiff that any future misrepresentations in pleadings may result in the imposition of sanctions against him.

The Court, however, overrules Defendants’ objections based on the misrepresentation made by Plaintiff and will allow Mr. Gulas to file the proposed Fourth Amended Complaint. When Gulas first tried to file the Fourth Amended Complaint, he was acting in a *pro se* capacity, notwithstanding obvious assistance he was receiving from an attorney. Moreover, while Gulas’ Third Amended Complaint did not allege cruel and unusual conditions of confinement, he made general allegations concerning his confinement and unconstitutional conditions of confinement. Defendants clearly understand that Mr. Gulas is making allegations against CCA regarding his conditions of confinement. For example, they argue in their Motion to Dismiss that the claims regarding Mr. Gulas’ conditions of confinement at the CCA facility in Estancia, New Mexico will proceed against CCA, while other claims should be dismissed. [Doc. 60.]

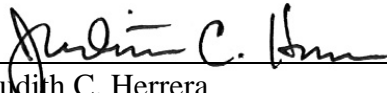
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<sup>1</sup>Mr. Gulas’ earlier attempt to file the Fourth Amended Complaint was done without consent of opposing counsel or permission from the Court. Thus, the pleading was stricken from the docket.

For all of these reasons, the Court overrules Defendants' objections and agrees with the Magistrate Judge's analysis and recommendation that Mr. Gulas be allowed to file the proposed Fourth Amended Complaint.

IT IS THEREFORE ORDERED that the findings and recommended disposition of the United States Magistrate Judge are adopted by the Court.

IT IS FURTHER ORDERED that Plaintiff's motion for leave to amend is GRANTED and that the proposed Fourth Amended Complaint (attached to the motion for leave to amend) must be filed within ten (10) days after entry of this Order.

  
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Judith C. Herrera  
UNITED STATES DISTRICT JUDGE